

## The Corporation of the City of Peterborough

### By-Law Number 21-074

Being a by-law to protect and enhance the City's tree canopy

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#### Recitals

1. Subsection 10(2) of the **Municipal Act, 2001** (the "Act") permits a single-tier municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, including respecting climate change.
2. Subsection 135(1) of the Act specifically permits a local municipality to enact by-laws to prohibit or regulate the destruction or injuring of trees.
3. Subsection 135(7) of the Act provides that the by-law may require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees.
4. Subsection 270(1) of the Act requires a municipality to adopt and maintain policies with respect to the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.

**Now therefore**, The Corporation of the City of Peterborough by its Council hereby enacts as follows:

#### Short Title

1. This By-Law may be referred to as the "Tree Removal By-law".

#### Interpretation

2. Unless otherwise stated:
  - a) a reference to any statute or regulation refers to a statute or regulation of Ontario as it may be amended or replaced from time to time;

- b) a reference to a by-law refers to a by-law of the City as it may be amended or replaced from time to time; and
  - c) a reference to a section, paragraph, clause or schedule is a reference to this By-law's section, paragraph, clause or schedule.
3. The table of contents and headings in this By-law are for convenience only and do not form part of this By-law.
  4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.
  5. In the event of any inconsistency between a provision of this By-law and of any other City by-law, the provision that, in the opinion of the Manager, more restrictively regulates prevails to the extent of the inconsistency.
  6. This By-law applies within the territorial limits of the City.

### **Definitions**

7. In this By-law:
  - a) "Administrative Order" means each of the orders described in paragraphs 26.a) and 26.b).
  - b) "Applicant" means each Person who or that submits an Application.
  - c) "Application" means an application for a Permit.
  - d) "By-law" means this By-law including its schedules.
  - e) "City" means The Corporation of the City of Peterborough or the geographic area of the City of Peterborough as the context requires.
  - f) "Council" means the City's Council.
  - g) "Destroy" means to remove, cut down, or in any other way Injure a Tree to such an extent that it is or, in the Manager's determination, will be necessary to remove or cut down the tree.
  - h) "DBH" or "Diameter at Breast Height" means the diameter of the stem of a Tree measured outside of the bark at a point that is 1.37 metres above the highest point of ground in an undisturbed state at the base of the Tree.
  - i) "Hearing Officer" means a hearing officer appointed pursuant to Hearing Officer By-law 20-077.
  - j) "Injure" means damage to a Tree that, in the Manager's determination, could inhibit or terminate its growth but does not include pruning or removing no more than 25% of the Tree's live crown that, in the Manager's determination, has improved or will improve the health of a Tree.
  - k) "Manager" means each of the Commissioner, Infrastructure and Planning Services, the Manager, Infrastructure Management, the Urban Forest Manager and each Urban Forest Technologist.
  - l) "Nursery" means the part of land on which the principal business is the growing of plants, shrubs and Trees for sale to the public.
  - m) "Officer" means
    - i) the Manager;
    - ii) each person from time to time appointed as a municipal law enforcement officer to enforce all or any of the City's by-laws;
    - iii) each assistant to the Fire Marshal employed by the City; and
    - iv) a police officer employed by Peterborough Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police.
  - n) "Orchard" means the part of land on which the principal business is the growing of fruit for sale to the public.
  - o) "Owner" includes each Person who or that has any right, title, interest or equity in land on which any part of the trunk of a Tree below its first branch is situate.

- p) "Permit" means a permit issued pursuant to this By-law.
- q) "Permit Decision Notice" means a notice described in section 14.
- r) "Permit Revocation Notice" means a notice described in section 22.
- s) "Permittee" means a Person to whom or to which a Permit has been issued.
- t) "Person" includes an individual, corporation or partnership.
- u) "Tree" means any species of woody perennial plant, including its root system, which has reached or has the genetic potential to reach a height of at least 4.5 metres and a DBH of at least 7.5 centimetres at physiological maturity.
- v) "Tree Service Provider" means an individual to whom a Tree Service Provider Licence has been issued pursuant to a City Licensing By-law.

### **Application of By-law**

8. This By-law does not apply to:

- a) activities or matters undertaken by a municipality or a local board of a municipality;
- b) activities or matters undertaken under a licence issued under the **Crown Forest Sustainability Act, 1994**;
- c) the Injuring or Destruction of trees by a person licensed under the **Surveyors Act** to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- d) the Injuring or Destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the **Planning Act** or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- e) the Injuring or Destruction of trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the **Planning Act** or as a requirement of an agreement entered into under the regulation;
- f) the Injuring or Destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the **Electricity Act, 1998**, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- g) the Injuring or Destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the **Aggregate Resources Act**;
- h) the Injuring or Destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
  - i) that has not been designated under the **Aggregate Resources Act** or a predecessor of that Act, and
  - ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the **Planning Act**;
- i) activities or matters undertaken pursuant to and in compliance with the Woodland Conservation By-law 17-121;
- j) activities or matters undertaken pursuant to a property standards order issued by the City; or
- k) Trees within a Nursery or an Orchard.

### **Destroying and Injuring Trees Prohibited**

9. No Person may Destroy or Injure a Tree except pursuant to a Permit.

10. No Owner may permit a Tree to be Destroyed or Injured except pursuant to a Permit.

## Permit Applications

11. The Manager may refuse to accept an Application unless the Manager is satisfied that:
  - a) the Application is complete, legible and submitted on forms from time to time established by the Manager;
  - b) an individual Applicant is not a minor;
  - c) the Application is by or on behalf of all Owners;
  - d) a corporate Applicant is incorporated pursuant to the laws of Ontario and is in good standing; and
  - e) the Application is accompanied by payment in full of any fee established by Council.
12. The Manager may issue a Permit to an Applicant if the Manager is satisfied that the Application complies with section 11, that the Applicant has complied and will comply at all times with this By-law and that the issuance of the Permit is not inconsistent with the protection and enhancement of the City's tree canopy. The Manager may otherwise refuse to issue a Permit.
13. In addition to conditions otherwise imposed pursuant to this By-law, the Manager may, at any time and from time to time, impose conditions to a Permit as the Manager determines are necessary to maintain the general intent and purpose of this By-law.
14. If the Manager issues a Permit with conditions pursuant to section 13 or refuses to issue a Permit pursuant to section 12, the Manager must give to the Applicant as soon as is reasonably practicable a Permit Decision Notice that includes the following information:
  - a) where a Permit is issued with conditions pursuant to section 13, particulars of the conditions;
  - b) where a Permit is refused, particulars of the reasons for refusing to issue the Licence;
  - c) information respecting the process by which the Applicant may exercise the Applicant's right to appeal to the Hearing Officer against the conditions or the refusal to issue the Permit; and
  - d) a statement that the Manager's decision, unless modified or rescinded by a Hearing Officer, is final and not subject to review including review by any Court.
15. A Tree Service Provider may, if permitted by a Manager, exercise the authority delegated to a Manager pursuant to sections 11, 12, 13 and 14 subject to compliance with those sections, to any conditions or directions related to the permission imposed or given by the Manager and to the following:
  - a) the Tree Service Provider must refuse to accept an Application that does not comply with section 11;
  - b) the Tree Service Provider must not collect personal information except:
    - i) personal information that relates only to the Applicant;
    - ii) directly from the Applicant;
    - iii) after giving notice to the Applicant in a form acceptable to the Manager and pursuant to subsection 28(2) of the **Municipal Freedom of Information and Protection of Privacy Act**, R.S.O. 1990, c. M.56;
    - iv) with the consent of the Applicant given only after the Applicant has received the notice referred in in clause iii); and
    - v) only such personal information that, in the Manager's determination, is necessary to the proper administration of this By-law.
  - c) the Tree Service Provider must impose such conditions to a Permit as the Manager may, from time to time, direct.

- d) The Tree Service Provider must forthwith transmit to the Manager particulars of an Application that the Tree Service Provider has accepted.
- e) The Tree Service Provider must not issue a Permit earlier than seventy-two hours following the Manager's receipt of the transmission required by paragraph d).

16. An Applicant who or that receives a Permit Decision Notice may appeal the conditions or the refusal to the Hearing Officer pursuant to section 30.
17. A Permit Decision Notice that is not appealed pursuant to section 30 is final and is not subject to review including review by any Court.
18. A Permit expires on the earlier of:
- a) the 90<sup>th</sup> day following the day on which it was issued; and
  - b) the day on which it is revoked.

### **Conditions Applicable to all Permits**

19. Each of the following is a condition of obtaining and continuing to hold a Permit:
- a) the Permittee complies with all applicable law respecting the subject matter of the Permit including this By-law;
  - b) the Permittee notifies the Manager in writing of any change to the information provided in an Application within three (3) days of the change;
  - c) without limiting paragraph a), the Permittee complies with all conditions to the Permit imposed pursuant to sections 13 or 15, as applicable;
  - d) the Permittee provides to the Manager such information as the Manager may from time to time require in relation to this By-law; and
  - e) the Permittee is not indebted to the City for any fee, fine or penalty.

### **Administration of By-law**

20. The Manager may do such things as the Manager considers appropriate in the administration of this By-law including:
- a) resolving inconsistencies for the purposes of section 5;
  - b) determinations for the purpose of the term, "Destroy", defined in paragraph 7.g);
  - c) determinations for the purpose of the term, "Injure", defined in paragraph 7.j);
  - d) determining Application requirements and related forms for the purposes of paragraph 11.a);
  - e) giving permission to Tree Service Providers pursuant to section 15 and imposing conditions and giving directions related to any such permission;
  - f) directing Tree Service Providers as to conditions to be imposed on a Permit pursuant to paragraph 15.c);
  - g) requiring information pursuant to paragraph 19.d);
  - h) determining compliance with conditions imposed pursuant to this By-law including pursuant to sections 13, 15 and 19; and
  - i) in consultation with the City Clerk, scheduling appeals to the Hearing Officer pursuant to paragraph 30.c).
21. It is Council's opinion that the powers delegated pursuant to this By-law are of a minor nature having regard to the number of people, the size of geographic area and the time period affected by an exercise of the power.

### **Permit Revocation**

22. In addition to any other remedy, where the Manager has reason to believe that a Permittee or a Tree Service Provider has not complied with this By-law, the Manager may give to the Permittee or the Tree Service Provider a Permit Revocation Notice that includes the following information:
- a) a statement that the Permit is revoked;
  - b) particulars of the reasons for which the Permit is revoked;

- c) information respecting the process by which the Permittee may exercise the Permittee's right to appeal to the Hearing Officer against the Permit Revocation Notice; and
- d) a statement that the Manager's decision to revoke the Permit, unless modified or rescinded by a Hearing Officer, will be final and not subject to review including review by any Court.

23. A Permittee that is given a Permit Revocation Notice may appeal to a Hearing Officer against the Permit revocation pursuant to section 30.

24. A Permit is revoked when a Permit Revocation Notice is given to the Permittee but may be reinstated only if and when so decided by the Hearing Officer pursuant to paragraph 30.g).

25. A Permit Revocation Notice that is not appealed pursuant to section 30 is final and not subject to review including review by any Court.

### **Administrative Orders**

26. In addition to any other remedy, if an Officer is satisfied that a contravention of this By-law has occurred, the Officer may

- a) make an order requiring the Person who contravened this By-law to discontinue the contravening activity; and
- b) make an order requiring the Person who contravened this By-law to do work to correct the contravention at the Person's expense.

27. A Person to whom or to which an Administrative Order has been given may appeal to the Hearing Officer against the order pursuant to section 30.

28. An Administrative Order that has not been appealed pursuant to section 30 is final and not subject to review including review by any Court.

29. In addition to any other remedy, the Officer may cause to be done the work set out in the order at the expense of the Person to whom or to which an Administrative Order described in paragraph 26.b) has been given if the Officer is satisfied that the Person has failed to comply with the order and:

- a) the Person has not appealed to the Hearing Officer pursuant to section 30; or
- b) the Person has appealed to the Hearing Officer pursuant to section 30, the Hearing Officer has confirmed or modified the Administrative Order in whole or in part and the work done is consistent with the Administrative Order as confirmed or modified.

### **Appeal to Hearing Officer**

30. The following rules and conditions apply to appeals to the Hearing Officer:

- a) A Person's right to appeal expires if it has not been exercised in the manner prescribed in paragraph b) before 4:30 p.m. on the tenth (10<sup>th</sup>) day after the Permit Decision Notice, the Permit Revocation Notice or the Administrative Order has been given to the Person.
- b) A right to appeal is exercised by:
  - i) giving to the Manager written notice of the appeal that includes particulars of all grounds upon which the appeal is made; and by
  - ii) paying the fee from time to time prescribed by Council.
- c) The Manager will give to the Person no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.
- d) Where the Person fails to appear at the time and place scheduled for a hearing of the appeal, the Person's appeal is deemed to be dismissed and the Person must pay to the City an administrative fee as from time to time prescribed by Council.
- e) Subject to paragraph d), the Hearing Officer may not decide the appeal unless the Hearing Officer has given each of the Person and the Manager an opportunity to be heard at the time and place scheduled for the hearing of the appeal.

- f) The Person is only entitled to be heard to the extent of the particulars included in the Person's notice given pursuant to clause b)i).
- g) The Hearing Officer may make any decision that the Manager could have made pursuant to this By-law.
- h) The decision of the Hearing Officer is final and not subject to review including review by any Court.

### **Administrative Penalties**

- 31. AMP System By-law 20-073 applies to each administrative penalty issued pursuant to this By-law.
- 32. Subject to section 33 and in addition to any other remedy, each Person that contravenes this By-law is, upon issuance of a penalty notice in accordance with AMP System By-law 20-073, liable to pay to the City an administrative penalty of:
  - a) \$175 for the remainder of the first day on which the contravention occurs; and
  - b) \$275 for each subsequent day on which the contravention continues.
- 33. Each Person that contravenes this By-law by undertaking an activity without a required Permit is, upon issuance of a penalty notice in accordance with AMP System By-law 20-073, liable to pay to the City an administrative penalty of:
  - a) \$500 for the remainder of the first day on which the contravention occurs; and
  - b) \$750 for each subsequent day on which the contravention continues.

### **Offences**

- 34. Subject to section 35, each Person that contravenes this By-law is guilty of an offence and, upon conviction, is liable to a fine for each day or part of a day on which the offence occurs or continues of:
  - a) not less than \$300 and not more than \$10,000;
  - b) not less than \$400 and not more than \$25,000 for a second conviction of the same offence; and
  - c) not less than \$500 and not more than \$50,000 for a third or subsequent conviction of the same offence.
- 35. A Person is not guilty of an offence for which a penalty notice has been issued pursuant to sections 32 or 33.

### **General**

- 36. For the purposes of a prosecution under the **Provincial Offences Act**, a proceeding under this By-law and a proceeding under AMP System By-law 20-073, the holding out to the public that an activity for which a Permit is required is being undertaken without the required Permit is admissible in evidence as proof, in the absence of evidence to the contrary, that the activity is being undertaken without the required Permit.
- 37. Any notice to be given to a Person other than the City is sufficiently given:
  - a) when given verbally to the Person;
  - b) when delivered in writing to the Person;
  - c) on the third (3<sup>rd</sup>) day after it is sent by regular lettermail to the Person's last known address; or
  - d) when sent to the Person by e-mail or by other means of electronic transmission.
- 38. For the purpose of paragraphs 37.c) and 37.d), a Person's last known address, last known e-mail address and other means of electronic transmission are deemed to include those provided pursuant to paragraph 11.a) as they may be changed pursuant to paragraph 19.b).
- 39. Any notice to be given to the City is sufficiently given:
  - a) on the third (3<sup>rd</sup>) day after it is sent by regular lettermail to "Forestry Division, City of Peterborough, 500 George St. N, Peterborough, ON K9H 3R9"; or

b) when sent by e-mail to [treebylaw@peterborough.ca](mailto:treebylaw@peterborough.ca).

40. No proceeding for damages or otherwise may be commenced against the City, a member of Council, or an officer, employee or agent of the City or a Person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law or for any alleged neglect or default in the performance in good faith of the duty or authority.

41. By-law 19-042, By-law 1982-82 and Chapter 765 of the Peterborough Municipal Code are repealed.

42. This By-law is in effect on July 9, 2021.

By-law passed this 28<sup>th</sup> day of June, 2021.

(Sgd.) Diane Therrien, Mayor

(Sgd.) John Kennedy, City Clerk